

UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

AMADOU DIALLO,

Plaintiff,

SUMMONS IN A CIVIL ACTION

-against-

THE CITY OF NEW YORK, PO JAMES DIAZ
(Shield 24459), PO RASHIED RICHARDSON
(Shield 27421), SGT. KEVIN ROUGHNEEN (Tax ID
918255, SGT. GUERRERO and JOHN DOES 1-5

CASE NUMBER:

Defendants.

'08 CIV 4390

TO: (Name and address of Defendant)

PO JAMES DIAZ (Shield 24459)
32nd Precinct
250 West 135th Street
New York, NY 10030

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

JOEL BERGER
360 LEXINGTON AVENUE, 16th Fl.
NEW YORK, NY 10017-6502

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

CLERK

DATE

Catherine Lapley
(By) DEPUTY CLERK

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
AMADOU DIALLO,

Plaintiff,

08 CV 4390 (LAP) (ECF Case)

-against-

**THE CITY OF NEW YORK, PO JAMES DIAZ
(Shield 24459), PO RASHIED RICHARDSON
(Shield 27421), SGT. KEVIN ROUGHNEEN (Tax ID
918255, SGT. GUERRERO and JOHN DOES 1-5,**

Defendants.
-----X

RETURN OF SERVICE

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

JOEL BERGER declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am the attorney for the plaintiff in the above-captioned action. I was admitted to practice before the United States District Court for the Southern District of New York on April 23, 1970, and before the courts of the State of New York on December 23, 1968.

2. On July 29, 2008, pursuant to Fed. R. Civ. P (4) (e) (1) and New York CPLR § 308 (2), I personally served the Summons and First Amended Complaint joining Police Officer James Diaz (Shield 24459) as a defendant in the above-captioned action upon Police Officer Diaz by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to Officer Diaz at his current actual place of business, the 32nd Police Precinct, 250 West 135th Street, New York, NY 10030, in an envelope bearing the legend "personal and confidential" and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served.

3. Police Officer Diaz was previously served pursuant to Fed. R. Civ. P. 4 (e) (2) (C) on July 9, 2008, by delivery of the Summons and First Amended Complaint to a person of suitable age and discretion at his actual place of business, *i.e.*, the desk officer of the 32nd

Police Precinct, a person authorized by appointment by New York City Police Department Patrol Guide 211-21 to accept service for him. A Return of Service to that effect was filed with the Court electronically on July 9, 2008, with hard copy being mailed to the Clerk's Office that same day. This additional Return of Service is being filed as a precaution because I have reason to believe that the New York City Law Department, in a departure from long-standing policy, may now be insisting that service of process has to be effectuated by mail as well as by delivery to the desk officer at the Precinct. The service by mail described in ¶ 2, above, together with the service accepted by the desk officer of the 32nd Police Precinct on July 9, 2008, leaves no doubt that defendant Diaz has now been served appropriately.

4. This Return of Service is being filed with the Clerk designated in the Summons within 20 days of the service by mail described in ¶ 2 above, as required by New York CPLR § 308 (2), which states that proof of service shall be filed with said Clerk within 20 days of either delivery or mailing, "whichever is effectuated later."

5. This Return of Service also establishes that service of process has been effectuated within the 120-day time limit of Fed. R. Civ. P. 4 (m). The Complaint was filed on May 9, 2008, and the First Amended Complaint joining Diaz as a defendant was filed on July 8, 2008.

6. By Order of Judge Preska dated July 17, 2008, the time for answering or otherwise responding to the First Amended Complaint was extended to August 28, 2008.

Dated: New York, New York
July 29, 2008



JOEL BERGER (JB-3269)